

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4VAC20-610-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: March 1, 2015.

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Summary:

The amendments set a limit of 125 agents that may participate annually in the blue crab fishery.

4VAC20-610-30. Commercial Fisherman Registration License; exceptions and requirements of authorized agents.

A. In accordance with § 28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their harvest, or give their harvest to another, in order that it may be sold, traded, or bartered. Only these licensees may sell their harvests from Virginia tidal waters, regardless of the method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling harvest are authorized for the following persons or firms only:

1. Persons taking menhaden under the authority of licenses issued pursuant to § 28.2-402 of the Code of Virginia.
2. Persons independently harvesting and selling, trading, or bartering no more than three gallons of minnows per day who are not part of, hired by, or engaged in a continuing business enterprise.
 - a. Only minnow pots, a cast net or a minnow seine less than 25 feet in length may be used by persons independently harvesting minnows.
 - b. All other marine species taken during the process of harvesting minnows shall be returned to the water immediately.

B. Requirements of authorized agents.

1. No person whose Commercial Fisherman Registration License, fishing gear license, or fishing permit is currently revoked or rescinded by the Marine Resources Commission pursuant to § 28.2-232 of the Code of Virginia is authorized to possess the Commercial Fisherman Registration License, fishing gear license, or fishing permit of any other registered commercial fisherman in order to serve as an agent for fishing the commercial fisherman's gear or selling the harvest.

2. No registered commercial fisherman shall use more than one person as an agent at any time.

3. Any person serving as an agent shall possess the Commercial Fisherman Registration License and gear license of the commercial fisherman while fishing.

4. When transporting or selling a registered commercial fisherman's harvest, the agent shall possess either the Commercial Fisherman Registration License of that commercial fisherman or a bill of lading indicating that fisherman's name, address, Commercial Fisherman Registration License number, date and amount of product to be sold.

C. Requirements of authorized blue crab fishery agents.

1. Any person licensed to harvest blue crabs commercially shall not be eligible to also serve as an agent.

2. Any person serving as an agent to harvest blue crabs for another licensed fisherman shall be limited to the use of only one registered commercial fisherman's crab license; however, an agent may fish multiple crab traps licensed and owned by the same person.

3. There shall be no more than one person, per vessel, serving as an agent for a commercial crab licensee.

4. Prior to using an agent in any crab fishery, the licensee shall submit a crab agent registration application to the commission. Crab agent registration applications shall be approved by the commissioner, or his designee, for a crab fishery licensee according to the following guidelines:

a. Only ~~168~~ 125 agents may participate annually in the ~~2014~~ crab fishery, as described in subdivision 4 b of this subsection, unless the commissioner, or his designee, approves a request for agent use because of a non-economic hardship circumstance and

b. ~~153 of the 168~~ 125 agents may be utilized by those crab fishery licensees who received approval for agent use in 2012 or who currently are licensed by a transferred crab fishery license from a licensee approved for agent use in 2012, except that should any of these licensees described in this subdivision fail to register for agent use by March 1, ~~2014~~, applications for agent use by other ~~2014~~ licensees shall be approved on a first-come, first-served basis, starting with those licensees who have registered prior to March 1, ~~2014~~.

D. Failure to abide by any of the provisions of this section, shall constitute a violation of this regulation.

E. In accordance with § 28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to § 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

2. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

F. Exceptions to the two-year delay may be granted by the commissioner if he finds any of the following:

1. The applicant for an exception (i) has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and (ii) can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.
2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.
3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.

Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at ~~their~~ its March, June, September, and December meetings.

Under no circumstances will an exception be granted solely on the basis of economic hardship.